

## REMARKS

### Status of the claims

Claims 1-6, 8, 14-19, 21-26, 28, 34-37, 43-44 and 50-51 are pending in the application. Claims 2-6, 8, 14-19, 21-26, 28, 43-44, and 50-51 are withdrawn from consideration. Claims 1 and 34-37 are rejected. No claims are amended.

### The 35 U.S.C. §103 rejection

Claim 1 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Yamazaki et al.* (US 2004/0249320) as modified by *Parkin et al.* (US 2002/0133176). The Applicants respectfully traverse this rejection.

The Examiner states that *Yamazaki et al.* disclose a device comprising an actuator for driving an abrasive surface, a container adapted to deliver an abrasive material, and a reservoir/permeable membrane adapted to contain a pharmaceutical. The Examiner concedes that *Yamazaki et al.* does not disclose a container connected to the device for collected ablated tissue from the ablation site, but that *Parkin et al.* teach that it is known to incorporate a vacuum source and collection container for removing ablated tissue. Thus, the Examiner asserts that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of *Yamazaki et al.* with a collection container as taught by *Parkin et al.* since such modification would make the device easier and more hygienic to use. The Applicants respectfully disagree.

The Applicants submit that *Yamazaki et al.* disclose a cosmetic treatment device for generating vibration comprising a motor, alumina based abrasive grains, and

housing for the motor. More particularly, *Yamazaki et al.* disclose the device to contact the skin surface of a user so as to penetrate a beauty treating agent into the skin.

The Applicants submit that *Parkin et al.* disclose a micro-dermabrasion system for the removal of surface portions of dead or living tissues. *Parkin et al.* disclose that conventional microdermal abrasion apparatuses employ a stream of abrasive particles such as sand applied to the surface of the tissue or skin by means of a vacuum pump through an opening which is sealed against the skin. Furthermore, the spent particles and removed tissues may be collected by vacuum pressure by the device and delivered to a collection container for later disposal.

The Applicants respectfully submit that the combination of *Yamazaki et al.* and *Parkin et al.* do not render the claimed invention obvious because there is no motivation for a person of ordinary skill in the art to combine the references. The claimed invention is drawn to a device for ablating a tissue. Hence, the recited container is used to collect ablated tissue which may interfere with the workings of the claimed device. By contrast, *Yamazaki et al.* disclose a device for impregnating a beauty treating agent into the skin. There is no mention of ablating any tissue nor any waste product created as a result of an ablation step. Thus, even if *Parkin et al.* disclose a container for collecting waste, there is no motivation for a person of ordinary skill in the art to combine the teachings of *Yamazaki et al.* and *Parkin et al.* since no waste is generated in *Yamazaki et al.*

Furthermore, the vibration frequency disclosed in *Yamazaki et al.* is between 100-20,000 cycles/min (1.7-333 Hz) with amplitudes in the 0.01 to 100 micron range [paragraph 0050]. These ranges are much lower than the frequency

and amplitude (millimeter) ranges taught in the claimed invention. In fact, *Yamazaki et al.* teach away from the claimed invention since they state higher frequencies and amplitudes would be irritating to the skin [paragraph 0063].

In view of the arguments presented herein, the Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. §103 be removed.

Claims 34-37 are rejected under 35 U.S.C. §103 as being unpatentable over *Yamazaki et al.* as modified by *Parkin et al.* and further in view of *Avrhami et al.* (US 2003/0212397). The Applicants respectfully traverse this rejection.

The Examiner states that while *Yamazaki et al.* as modified by *Parkin et al.* do not explicitly disclose monitoring feedback using an electrical property, *Avrhami et al.* teach monitoring feedback using heartbeat to perform safe ablation procedure. Thus the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of *Avrhami et al.* in the device of *Yamazaki et al.* as modified by *Parkin et al.* to increase the safety of the ablation procedure for better patient outcome. The Applicants respectfully disagree.

As discussed *supra*, *Yamazaki et al.* and *Parkin et al.* fail to disclose the claimed invention as recited in independent claim 1. Claims 34-37 all depend on claim 1, which the applicants respectfully submit is novel and unobvious in view of the arguments presented earlier.

Furthermore, *Avrhami et al.* monitor heartbeat to synchronize their treatment so as to not disturb the cardiac rhythm. *Avrhami et al.* do not monitor the properties of the ablated tissue. By distinct contrast, the claimed invention is drawn to

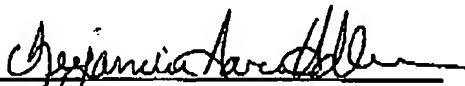
a tissue ablation device having a means for controlling feedback monitoring of a change in an electrical property of the ablated tissue. Thus, the claimed invention is capable of tracking and controlling the ablated tissue while the device disclosed in *Avrhami et al.* do not.

In view of the lack of motivation to combine *Yamazaki et al.* and *Parkin et al.* and the arguments presented herein, the Applicants respectfully request that the rejection of claims 34-37 under 35 U.S.C. §103 be removed. The Applicants submit that all pending claims are now in condition for allowance.

This is intended to be a complete response to the Office Action, mailed July 15, 2009. If any issues remain outstanding, the Examiner is respectfully requested to telephone the undersigned attorney of record for immediate resolution. A Petition for Extension of Time and PTO Form-2038 are also enclosed herewith. In absence of this form, please debit the petition fee or any other fees due from Deposit Account 07-1185. If this is in error, please debit any applicable fees from Deposit Account No. 07-1185 upon which the undersigned is allowed to draw.

Respectfully submitted,

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